

Summary of Supplemental Rules of Practice for Amending Federal Milk Marketing Orders

Proposal Submission Requirements

Proposals to amend a Federal Milk Marketing Order must include:

- A description of the disorderly market condition(s) that the proposal is intended to address. (i.e. an explanation of the proposal).
- The purpose of the proposal.
- A description of the current Federal order requirements or industry practices relative to the proposal.
- The expected impact on the industry, including producers, handlers and consumers. The proposal should explain and quantify the expected impacts.
- A description of the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612). The proposal should explain and quantify the expected effects.
- A description of how the adoption of the proposal would increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary. The proposal should explain and quantify the cost impacts of adoption.
- Whether or not a pre-hearing information session would be helpful in explaining the proposal.

Timeline

1. Once a proposal is received, USDA has 30 days to:

- A. Issue an action plan and expected timeframes for the different steps in the formal rulemaking process [so that completion of the public hearing phase of the order amendment process occurs not more than 120 days from issuance of the notice of action plan.
- Notice of the action plan will appear on the Dairy Programs, AMS website and through program releases to interested persons.

OR

- B. Request additional information from the person(s) submitting the proposal. Such information may help USDA determine whether the proposal merits a hearing on the issue.
- If the information is not received within a specified timeframe then the request for a hearing shall be denied.

OR

- C. Deny hearing request.

Information Session May be Held

- If an information session on a proposal is requested and deemed by USDA to be of value, then the person(s) submitting a proposal shall have up to three calendar days following the session to modify or withdraw the proposal.

2. Issuance of Notice of Hearing

3. Requests for USDA Data

- Any requests for preparation of USDA data to be used at a hearing must be received at least 10 days prior to the beginning of the hearing.
- **IF**, an amendatory hearing is announced less than 10 days prior to the start of the hearing then requests for data must be submitted within 2 days following publication of the notice of hearing in the Federal Register.

4. Advance Submission of Testimony

- Persons proposing an amendment, who are participating as a witness, shall make copies of their

testimony, if prepared as an exhibit, and any other exhibits available to USDA officials before the start of the hearing on the expected day of appearance.

- Individual dairy farmers testifying at a hearing not subject to this requirement.

5. **Hearing is held.**

6. **Hearing record made available.**

7. **Corrections to transcript**

- Within 30 days after the hearing record is made available interested persons shall file corrections to the transcript of testimony.

8. **Post-hearing briefs**

- Interested persons shall file post-hearing briefs by the date determined by the Administrative Law Judge presiding at the hearing, not to exceed 60 days after the end of the hearing.

9. **Recommended Decision**

- Within 90 days after the deadline for submission of post-hearing briefs, USDA shall issue a recommended decision or, when applicable, a tentative final decision.

10. **Exceptions to Recommended Decision**

- Within 60 days after publication of the recommended decision in the Federal Register, exceptions to a recommended decision shall be filed with the hearing clerk unless otherwise noted in the decision.
- No similar deadline is specified for a tentative final decision.

11. **Final Decision**

- Within 60 days after the deadline for the submission of exceptions to the recommended decision USDA shall issue a Final Decision.

Informal Rulemaking

USDA may elect to use informal rulemaking procedures to amend Federal milk marketing orders, other than provisions that directly affect milk prices. In making this determination, consideration shall be given to the following:

- The nature and complexity of the proposal;
- The potential regulatory and economic impacts on affected entities; and
- Any other relevant matters.

Industry Assessments

If the USDA determines it necessary to improve or expedite an amendatory formal rulemaking proceeding, USDA may impose an assessment on pooled milk in the particular marketing area that stands to be affected by the proposals heard at the amendatory proceeding.